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OFFICE OF PETITIONS

In re Application of :
William E. Sonnier et al :
Application No. 10/060,022 : DECISION ON PETITION
Filed: January 28, 2002 :
Attorney Docket No. :
503472.000009 :

This is a decision on the petition under 37 CFR 1.137(b), filed May 29, 2007, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed March 21, 2003, which set a shortened statutory period for reply of three (3) months. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, the application became abandoned on June 22, 2003. A Notice of Abandonment was mailed on March 25, 2004.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR

1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). In view of the inordinate delay in this case, there is a question as to whether the entire delay was unintentional.

The petition is accompanied by a copy of the reply allegedly mailed by certificate of mailing on September 21, 2003, along with a copy of a request for a three (3) month extension of time. Additionally, the petition is accompanied by a copy of a petition to revive and a terminal disclaimer alleged to have been mailed via certificate of mailing on September 15, 2004. Additionally, copies of status inquiries concerning the status of this application dated July 20, 2005 and February 15, 2005 also accompany the present petition to revive. The copies of the documents submitted with the petition were allegedly mailed by the previous attorney of record, Ms. Susan M. Ben-Oliel. However, none of these documents are of record in the file, nor is there any indication that these documents were received in the USPTO.

While the petition is accompanied by copies of the alleged previous mailing of the reply, extension of time, petition to revive, terminal disclaimer, and status inquiries, there is no statement from Ms. Ben-Oliel, the prior attorney of record, attesting on a personal knowledge basis as to the previous mailing of these documents. It is rather unusual for none of these documents to have reached the file record of this application. Therefore, a statement is required from Ms. Susan M. Ben-Oliel as to her knowledge of the previous mailing of these documents, any proof of receipt of these documents in the USPTO, such as a stamped return postcard, copies of the checks stated to have been submitted with the reply for the extension of time and petition to revive, and any other evidence which would support a showing that these documents were in fact mailed on the stated dates. Further, as Ms. Oliel has a Canadian address, Ms. Oliel should state whether in fact these documents were deposited with the U.S. Postal Service as required by 37 CFR 1.8(a). Additionally, statements are required from Ms. Oliel as to steps taken when it was learned that the USPTO did not receive the reply and the petition to revive. While it is noted that status inquiries appear to have been made, the mailing of these inquiries are not substantiated by the record of this case. Further, as status inquiries are shown to have allegedly been made on February 15, 2005 and July 20, 2005, the record fails to show any further affirmative action taken for approximately two years in seeking revival of this application. For these reasons, the record fails to support a showing that "the entire delay in

filing the required reply from the due date of the reply to the filing of a grantable petition was unintentional."

An applicant's failure to carry the burden of proof to establish that the "entire" delay was "unavoidable" or "unintentional" may lead to the denial of a petition under 37 CFR 1.137(b), regardless of the circumstances that originally resulted in the abandonment of the application. See also New York University v. Autodesk, 2007 U.S. DIST LEXIS, U.S. District LEXIS 50832, *10 - *12 (S.D.N.Y. 2007) (protracted delay in seeking revival undercuts assertion of unintentional delay).

Further correspondence with respect to this matter should be addressed as follows:

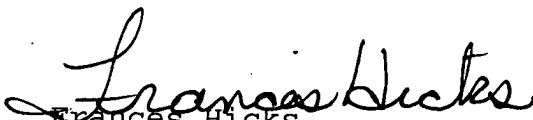
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The centralized facsimile number is (571) 273-8300.

Correspondence regarding this decision may also be filed through the electronic filing system of the USPTO.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218 or to the Office of Petitions Help Desk at (571) 272-3282 after January 3, 2008.


Frances Hicks
Petitions Examiner
Office of Petitions